

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 7 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
  2. To be referred to the Reporter or not? No
  3. Whether Their Lordships wish to see the fair copy of the judgement? No
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?No
  5. Whether it is to be circulated to the Civil Judge? No

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LACHHUBHAI NAMLABHAI RATHWA

Versus

STATE OF GUJARAT

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Appearance:

MR SG UPPAL, L.A. (appointed) for the appellant  
Mr.Y.F.Mehta, APP for Respondent No. 1

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CORAM : MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

Date of decision: 06/12/96

ORAL JUDGEMENT (N.J.Pandya,J.)

The appeal having been filed through Jail, care was taken to appoint a learned Advocate of the Bar and that is how Mr.S.G.Uppal has argued the matter on behalf of the appellant.

2. The appellant accused was facing charge of murder in Sessions Case no.42 of 1988 conducted by the learned Additional Sessions Judge, Baroda. At the end of the trial, by his judgment dated 16-12-1988, the learned Judge was pleased to hold the accused guilty.

3. The case of the prosecution against the accused-appellant is that on 9th June 1988 at about 12.30 p.m. the accused gave 3 blows with the sharp edge of an axe. However, as it did not have a handle attached to it, it has been referred to as "Palia". The deceased i.e. father of the accused died on the spot. The reason for the incident said to be roof-sheets required by the accused for either repairing or constructing his portion of the house which is just by the side of the house of the deceased and reluctance on the part of the deceased to give the sheets.

4. There are two eye witnesses Chuniyabhai Thavariya Exh.7 and Latiya Dhanji Rathva Exh.8. They have deposed in conformity with the prosecution case.

5. So far as medical evidence is concerned, it corroborates the eye witnesses account fully in form of deposition of Dr. Nalini Ahya Exh.11 and postmortem notes prepared by her, Exh.12. Three injuries were found on the head of the deceased corresponding to that of said instrument and the external injuries corresponded to the injury to the brain and therefore, instantaneous death is quite understandable. Panchnama of the scene of offence exh.15 indicates that blood stained Palia was found lying at the place and it has been sent to FSL for test and analysis as per report xh.21. It was found containing human blood of the group of "o".

6. Under the circumstances, in our opinion, the conclusion arrived at by the learned trial Judge cannot be faulted with at all. When as many as 3 blows are given with a sharp cutting instrument of the aforesaid nature resulting into those three injuries, any of which was capable of leading to death, the crime committed by the accused-appellant could be nothing else, but that of murder punishable under Sec.302 of Indian Penal Code. L.A. Mr.Uppal did try to take out a case of lesser offence namely culpable offence not amounting to murder punishable under Sec.304 part II. Under the aforesaid circumstances, we do not agree with him and therefore do not accept his argument.

7. In the result, the appeal fails and is dismissed.

The conviction order passed by the trial Court is confirmed.

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gmK

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